



Memorandum

TO: City Council

FROM: Mayor Chuck Reed
Councilmembers
Sam Liccardo,
Ash Kalra, and
Rose Herrera

SUBJECT: See Below

DATE: February 11, 2009

Approved Chuck Reed Date 2-11-09
Ash Kalra Sam Liccardo Rose Herrera

SUBJECT: DOWNTOWN NIGHTLIFE: COST-SHARING

RECOMMENDATIONS

1. Support staff recommendation to implement a soft-closing program for the Downtown Entertainment Zone.
2. Support staff recommendation to amend the Public Entertainment Permit Ordinance to authorize a change in the fee methodology to include costs related to police enforcement of that ordinance, and to bring the actual fee increases forward as part of the 2009-2010 budget process in May and June, with the following changes:
 - a. Hold additional community meetings prior to returning to Council with any proposed changes in this policy. Outreach should include interested stakeholder groups including, but not limited to, affected businesses and neighborhood associations in the Entertainment Zone, 1stAct Silicon Valley, the Silicon Valley Chamber of Commerce, the San Jose Restaurant and Entertainment Association and the San Jose Downtown Association. Reports to council should reflect the extent of outreach.
 - b. Include in the fee methodology a "sliding scale" approach—articulated in the January 9, 2009 staff memorandum as "Alternative 1"—that would exempt the first 50 persons of occupancy—or some other appropriate number—from the fee calculation.

4. Direct the City Manager to engage with the San Jose Police Officers' Association to discuss alternative deployment models, particularly as to any matters that may eventually raise "meet and confer" obligations.
5. Direct the City Manager to return to Council by April 21, 2009 with a status report that includes:
 - a. a proposed alternative policing model, and a description of any changes that the Police Department has already implemented in the past 2 years;
 - b. an analysis of the feasibility of the Redevelopment Agency serving as the entity implementing a hybrid "secondary employment" program; and
 - c. an analysis of the feasibility for assessing a cost recovery fee on any establishment located in the EZ that serves alcohol after 11 p.m., or some other appropriate time. Such a fee would require a mechanism separate from the Entertainment Permit.
6. Direct the City Manager to include police overtime cost and deployment data in quarterly reports prepared for the Public Safety, Finance and Strategic Support Committee.
7. Subsequent to Council action in June, report back to Council soon thereafter regarding the feasibility of the following options:
 - a. assessing a police cost-recovery fee for any similar establishment located anywhere in the City of San Jose, beginning in fiscal year 2010-2011.
 - b. placing an "overtime cap" on police costs and deployment in the EZ, by requiring the City Manager to return to council to request authorization for additional funds to cover overtime expenditures that exceed the cap.

ANALYSIS

For well over a decade, since the demise of secondary employment downtown, city management has sought help from nightclubs to defray the costs of policing in the Entertainment Zone (EZ). After an aborted attempt at an ordinance in the late 1990's, taxpayers have footed those costs, and police resources have become increasingly stretched by tight budgets and a growing demand for services. Almost certainly, we will soon face a budget deficit well in excess of the current \$65 million estimate, and by any measure, the cost of policing the EZ greatly exceeds the almost \$200,000 in tax revenue generated by downtown clubs.

In February 2007, the Downtown Working Group approved a series of recommendations to improve the friendliness and safety of the downtown—including the implementation of a "soft closing" pilot, a promoter licensing ordinance, CUP revisions, additional monitoring in the parking garages, taxi access improvements, and zoning regulations—many of which have already been implemented. Among those recommendations, approved by the full Council on March 27, 2007, was a recommendation for "creating an agreement where the Downtown clubs will assume a fair share of the additional police staffing costs directly associated with monitoring the clubs." Council again approved

It exceeds the Council's province to tell the Police Chief how to police the downtown. We agree, moreover, that any proposed solution must keep officers within the Police Chief's "chain of command"; that is, an acceptable model cannot leave officers at the direction of club owners, or on their payroll.

Many variations exist, however, between a full "secondary employment" approach and the current approach. One potential solution might expand staff's "roving patrol" model with the assignment of foot patrol officers to very specific geographic areas or "sub zones" within the Entertainment Zone—areas as small as a quarter of a block or less—where nightclubs are located. Officers would remain on foot throughout the time in which they patrol their sub-zone. Although those roving patrol officers would remain subject to redeployment for individual calls of service or emergencies, as deemed appropriate by their supervising officer, they would return immediately to patrol their assigned sub-zone on foot for the remainder of their shift.

Other changes would seek to assure that a substantial number of officers in the Entertainment Zone work on regular-time, during specially-designated shift that lasts until closing time. Having officers begin their shift earlier gives them additional time to anticipate problem situations. Club owners' share of costs could be restricted to the aggregate costs of those officers who patrol the sub-zones, which might mitigate legal challenges to the fee under Proposition 218.

In any event, there seems a consensus about one way to reduce policing costs: using individual sanctions against those clubs whose patrons cause a disproportionate share of problems. Existing tools, including the urgency ordinance, should suffice to root out the "problem clubs" and reduce the costs for everyone, particularly for those clubs whose managers work diligently to cooperate with law enforcement.

The Fees – Exploring Options

Although this discussion is hardly new, the prospect of additional fees has predictably raised hackles. Various options are worth additional investigation to address some of these concerns:

- **Tying Fees to the Service of Alcohol**

Some club owners object to the fee's exclusive focus on holders of entertainment permits, insofar as it may raise unintended consequences and inequities. Bars lacking entertainment permits still require police resources, yet would escape paying a fee. Some club owners may respond to the imposition of the fee by forfeiting their entertainment permits, and simply choose to operate large bars with stereo music without paying a cent.

For that reason, we seek to have staff investigate the imposition of fees on any establishment that serves alcohol after a specified time, such as 11 p.m. Many small restaurant bars or hotel bars would likely avoid payment by virtue of a 50- or 75-person occupant exemption, described in paragraph 2.b. of our "Recommendations." Those establishments that wish to avoid fees by halting alcohol service at a late hour can certainly do so, and simply serve food and non-alcoholic beverages. Since this requires